

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4481 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VINODKUMAR C SOLANKI & ORS.

Versus

MANAGER, JEHANGIR TEXTILE MILLS

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Appearance:

MR AR THACKER for Petitioners

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/96

ORAL JUDGMENT

Having heard the learned counsel for the petitioner, I do not find any substance in this Special Civil Application. Prayer has been made for directing the respondent to pay the petitioners, the amount less paid to them when they were workers of the Contractor from 1981 to 1983 and also to take them in service as regular workers.

2. In reply to this writ petition, the respondent has come up with the case that this writ petition suffers from defect of multiplicity of proceedings. The averments made by respondent in para-5 thereof reads as under:

"I further say and submit that the petition suffers from the vice of multiplicity of proceedings and on this ground, as also on the principle of res-judicata, the present petition is not maintainable. In this connection, I say and submit that the petitioners had filed a petition, being Special Civil Application No.5376 of 1983, which had already been disposed of by a speaking order passed on April 23, 1984 by the Division Bench of this Hon'ble Court, consisting of N.H. Bhatt and M.B. Shah - Judges. The petitioners themselves have annexed a copy of the said order at annexure 'C' (page 12) to the petition. It is further clarified that in fact, all the annexures namely annexures A, B, C, D and E to the present petition (right from pages 8 to 21) form part and record of the said Special Civil Application No.5376 of 1983, previously filed by the same set of petitioners against the present Mill Company. A perusal of the said record annexed at annexures 'A' to 'E' will show that there is clear multiplicity of the proceedings in the matter of the said petition (No.5376 of 1983). Parties to the present petition (SCA 4481/84) and the said earlier petition (SCA 5376 of 84) are the same. The subject-matter of both the petitions is also the same. I further say and submit that the petitioners also moved this Hon'ble Court for revival of the said writ petition - No.5376 of 1983 and, subsequently, the Division Bench of this Hon'ble Court (Coram N.H. Bhatt and M.B. Shah - J.J) has passed an order dated 28th September 1984, reviving the said writ petition No.5376 of 1983, and the said writ petition now stands revived under the orders of this Hon'ble Court, passed on September 28, 1984. Thus, it is clear that the petitioners have resorted to multiplicity of proceedings on the same issue in both these petitions. This has resulted into two similar petitions presented before this Hon'ble Court, on the same subject matter. I say and submit that in response to the orders passed by this Hon'ble Court in the earlier petition No.5376 of 1983, the present petitioners have

been offered the BADLI Work in compliance of the order of this Hon'ble Court. I say that in terms of the order of this Hon'ble Court passed on April 23, 1984, petitioners Nos. (1) to (5) are already taken in employment as "BADLI - Workers" in the Stamping Department of the Respondent Mill Company and they are working as Badli-Workers, as Bundlers and/or as Coverers in the said Department and the sixth petitioner is working as a Badli Sweeper in the Respondent Mill. It is clarified at this stage that petitioner No.(6) has never worked as a Stamper as alleged by him in paragraphs (3) of the petition, and the said allegation is wholly incorrect and is misleading. I say that in compliance with the order of this Hon'ble Court passed on 23.4.1984, as shown in Annexure C to the petition, the seniority of the petitioners Nos. 1 to 5 has been treated on the basis of May 19, 1983, as if it is the Entry in the Register for the purpose of assigning Badli-Work. The said order (Annexure C to the present petition) also directs that some work is bound to be received by petitioners Nos. (1) to (5) and, accordingly, I say that petitioners Nos. (1) to (5) have been assigned BADLI-Work, right from May 1984, until date. I annex hereto a statement showing the number of days, petitioners Nos. (1) to (5) were assigned Badli-Work during the period from May 1984 till September 1984, at annexure (1) to this Affidavit. The said statement (Annexure 1), will clearly show that petitioner No. (1) to (5) are in employment of the Respondent Mill as Badli-Workers in the Stamping Department until date. I also crave leave to submit further statement showing the number of days of Badli-work put in by petitioners Nos. (1) to (5) for the months of October 1984 and further, if and when necessary. I say and submit that the said petitioners have already been issued BADLI-Passes, showing that they are the employees of the Respondent Mill. Even petitioner No.(6) has also been issued Badli-Pass as a Badli-Sweeper, and these Badli-Passes are in their possession and power even today, which clearly goes to show that the petitioners are not out of employment; but that they are engaged as the Badli-workers by the Mill Company."

3. The petitioners have filed a rejoinder to the reply, but the averments made in para-5 of the

affidavit-in-reply are not successfully controverted by the petitioners. The petitioners cannot be allowed to prosecute two matters simultaneously for same cause and relief. The petitioners' counsel is also unable to give out what ultimately has happened to the Special Civil Application No.5376 of 1983.

4. This writ petition is being dismissed only on the ground that the petitioners have already filed another petition and whatever grievance made by the petitioner in this Special Civil Application will be decided in the said Special Civil Application. From the reply and rejoinder it appears that when the Special Civil Application No.5376 of 1983 has been dismissed for non prosecution, this Special Civil Application would have been filed, but undisputedly that petition has now been revived.

5. In the result, this Special Civil Application fails and the same is dismissed. However, dismissal of this Special Civil Application will not come in way of the petitioners to get Special Civil Application No.5376 of 1983 decided on merits. Rule is discharged. No order as to costs.

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(sunil)